

## Commonwealth of Dominica



## Office of the Maritime Administrator

- TO:** ALL SHIPOWNERS, OPERATORS, MASTERS AND OFFICERS OF MERCHANT SHIPS, AND RECOGNIZED ORGANIZATIONS
- SUBJECT:** Recommendations on Fair Treatment of Seafarers in the Event of a Maritime Accident
- REFERENCE:**
- (a) CDP 101 International Maritime Act, Consolidated Edition, 2002
    - Chapter 7, part II – Investigations
    - Chapter 8 - Merchant Seamen
  - (b) CDP 102 International Maritime Regulation, 2002
    - Chapter 6, Marine Casualties and Offenses,
    - Chapter 7, Merchant Seamen
  - (c) CDP 400 Procedures for Marine Investigations and Hearings
  - (d) IMO Resolution A.987(24)
  - (e) IMO Resolution LEG.3(91)
- PURPOSE:** This Circular advises on steps to be taken by all those who may be involved following a maritime accident: the port or coastal State, flag State, the seafarer's State, the shipowner and seafarers themselves.
- APPLICATION:** The information contained herein is recommendation and presented for the Shipowners, Operators of all Dominica flagged vessels and seafarers.
- BACKGROUND:**

1. The Joint IMO/ILO Ad Hoc Expert Working Group on the Fair Treatment of Seafarers in the Event of a Maritime Accident was established in 2005 to work on the development of appropriate guidelines for endorsement by IMO and ILO. A resolution prepared by the Group and subsequently adopted jointly by the IMO Assembly and the ILO Governing Body in December 2005 (A.987(24)) states that both ILO and IMO are seriously concerned about the need to ensure the fair treatment of seafarers in view of the growing use of criminal proceedings against seafarers after a maritime accident. The resolution recognizes the urgency of adopting Guidelines as a matter of priority and, to this end, requested the Group to finalize its work expeditiously. The Group completed this task in March 2006.
2. Guidelines on fair treatment of seafarers in the event of a maritime accident have been adopted by the IMO's Legal Committee, which met for its 91st session from 24 to 28 April

2006. The Guidelines, developed by a Joint IMO/ILO Ad Hoc Expert Working Group on the Fair Treatment of Seafarers in the Event of a Maritime Accident, were also adopted by the ILO Governing Body, which met in June 2006.

3. The Guidelines recommend that they be observed in all instances where seafarers may be detained by public authorities in the event of a maritime accident. Seafarers are recognized as a special category of worker. Given the global nature of the shipping industry and the different jurisdictions with which they may be brought into contact, they need special protection, especially in relation to contact with public authorities.

4. The objective of the Guidelines is to ensure that seafarers are treated fairly following a maritime accident and during any investigation and detention by public authorities and that detention is for no longer than necessary.

5. The Guidelines give advice on steps to be taken by all those who may be involved following an incident: the port or coastal State, flag State, the seafarer's State, the shipowner and seafarers themselves. The emphasis is on co-operation and communication between those involved and on ensuring that no discriminatory or retaliatory measures are taken against seafarers because of their participation in investigations.

6. Member Governments are invited, in the resolution, to implement the Guidelines as from 1 July 2006.

## **RECOMMENDATIONS:**

### **1 Guidelines for the port or coastal State**

The port or coastal State should:

- 1.1 take steps so that any investigation they conduct to determine the cause of a maritime accident that occurs within their jurisdiction is conducted in a fair and expeditious manner;
- 1.2 co-operate and communicate with all substantially interested States, shipowners, and seafarers, and take steps to provide seafarers' representative organizations in the port or coastal State with access to seafarers;
- 1.3 take steps to ensure that adequate measures are taken to preserve human rights of seafarers at all times, and the economic rights of detained seafarers;
- 1.4 ensure that seafarers are treated in a manner which preserves their basic human dignity at all times;
- 1.5 take steps to ensure/verify that adequate provisions are in place to provide for the subsistence of each detained seafarer including, as appropriate, wages, suitable accommodation, food and medical care;
- 1.6 ensure that due process protections are provided to all seafarers in a non-discriminatory manner;
- 1.7 ensure that seafarers are, where necessary, provided interpretation services, and are advised of their right to independent legal advice, are provided access to independent legal advice, are advised of their right not to incriminate themselves and their right to

- remain silent, and, in the case of seafarers who have been taken into custody, ensure that independent legal advice is provided;
- 1.8 ensure that involved seafarers are informed of the basis on which the investigation is being conducted (i.e., whether it is in accordance with the IMO Code for the Investigation of Marine Casualties and Incidents (resolution A.849(20), or pursuant to other national legal procedures);
  - 1.9 ensure that the obligations of the Vienna Convention on Consular Relations, including those relating to access, are promptly fulfilled and that the State(s) of the nationality of all seafarers concerned are notified of the status of such seafarers as required, and also allow access to the seafarers by consular officers of the flag State;
  - 1.10 ensure that all seafarers detained are provided with the means to communicate privately with all of the following parties:
    - family members;
    - welfare organizations;
    - the shipowner;
    - trade unions;
    - the Embassy or Consulate of the flag State and of their country of residence or nationality; and
    - legal representatives;
  - 1.11 use all available means to preserve evidence to minimize the continuing need for the physical presence of any seafarer;
  - 1.12 ensure decisions taken pursuant to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78) are consistent with the provisions of Annex 1 (Regulations for the prevention of pollution by oil), Regulation 11;
  - 1.13 promptly conduct interviews with seafarers, when done for a coastal State investigation following a maritime accident, taking into account their physical and mental condition resulting from the accident;
  - 1.14 take steps to ensure that seafarers, once interviewed or otherwise not required for a coastal State investigation following a maritime accident, are permitted to be re-embarked or repatriated without undue delay;
  - 1.15 consider non-custodial alternatives to pre-trial detention (including detention as witnesses), particularly where it is evident that the seafarer concerned is employed in a regular shipping service to the detaining port or coastal State;
  - 1.16 promptly conclude its investigation and, if necessary, charge seafarers suspected of criminal actions and ensure that due process protections are provided to all seafarers subsequent to any such charge;
  - 1.17 have in place procedures so that any damage, harm or loss incurred by the detained seafarer or by the shipowner, in relation to the detention of that particular seafarer, attributable to the wrongful, unreasonable or unjustified acts or omissions of the detaining port or coastal State are promptly and fully compensated;
  - 1.18 insofar as national laws allow, ensure that a process is available for posting a reasonable bond or other financial security to allow for release and repatriation of the

- detained seafarer pending resolution of any investigatory or judicial process;
- 1.19 take steps to ensure that any court hearing, when seafarers are detained, takes place as expeditiously as possible;
  - 1.20 take steps to ensure decisions taken are consistent with generally applicable provisions of the law of the sea;
  - 1.21 take steps to respect the generally accepted provisions of international maritime law regarding the principle of exclusive flag State jurisdiction in matters of collision or other incidents of navigation; and
  - 1.22 take steps to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations.

## **2 Guidelines for the flag State**

The flag State should:

- 2.1 take steps to ensure that any investigation to determine the cause of a maritime accident is conducted in a fair and expeditious manner;
- 2.2 co-operate and communicate with all substantially interested States, shipowners, and seafarers, and take steps to provide seafarers' representative organizations with access to seafarers;
- 2.3 where appropriate, participate directly, under the IMO Code for the Investigation of Maritime Casualties and Incidents (IMO Assembly resolution A.849(20) as amended by resolution A.884(21) and as may be subsequently amended), in any casualty investigation;
- 2.4 assist in ensuring that shipowners honour obligations to seafarers involved in a maritime accident or any investigation;
- 2.5 ensure/verify that adequate provisions are in place to provide for the subsistence of each detained seafarer, including, as appropriate, wages, suitable accommodation, food and medical care;
- 2.6 ensure that shipowners honour obligations to co-operate in any flag, coastal or port State investigation following a maritime accident;
- 2.7 assist seafarers to secure fair treatment, and assist shipowners in the event of an investigation by a port or coastal State;
- 2.8 fund the repatriation of seafarers, where necessary, following the aftermath of a maritime accident in instances where shipowners fail to fulfil their responsibility to repatriate;
- 2.9 assist, as provided for in national law, in the issuance and service of process and the return to a port or coastal State of seafarers subject to its jurisdiction who are needed solely as witnesses in any proceeding following a maritime accident;
- 2.10 take steps to ensure that its consular officers are permitted access to the involved seafarers, irrespective of their nationality;
- 2.11 take all necessary measures to ensure the fair treatment of seafarers who were employed or engaged on a vessel flying its flag. This may ultimately include utilizing international dispute resolution mechanisms, which can secure the prompt release of vessels and crews upon the posting of a reasonable bond or financial security; and

- 2.12 take steps to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations.

### **3 Guidelines for the seafarer's State**

The seafarer's State should:

- 3.1 co-operate and communicate with all substantially interested States, shipowners, and seafarers, and take steps to provide seafarers' representative organizations with access to seafarers;
- 3.2 monitor the physical and mental well-being and treatment of seafarers of their nationality involved in a maritime accident, including any associated investigations;
- 3.3 fund the repatriation of their national seafarers, where necessary, following the aftermath of a maritime accident in instances where shipowners and the flag State fail to fulfil their responsibility to repatriate;
- 3.4 assist, as provided for in national law, in the service of process and the return to a port or coastal State of seafarers subject to its jurisdiction who are needed solely as witnesses in any proceeding following a maritime accident;
- 3.5 take steps to ensure that its consular officers are permitted access to the involved seafarers;
- 3.6 take steps to provide support and assistance, to facilitate the fair treatment of nationals of the seafarer State and the expeditious handling of the investigation;
- 3.7 take steps to ensure that all funds remitted by shipowners, the detaining State, or any other State for detained seafarers, or for support of those seafarers' families, are delivered for the intended purposes; and
- 3.8 take steps to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations.

### **4 Guidelines for shipowners**

With regard to investigations, shipowners have an overriding duty to protect the rights of the seafarers employed or engaged, including the right to avoid self-incrimination and to take steps to ensure their fair treatment, and should:

- 4.1 take all available measures to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations and take steps to ensure that such conduct by other entities is not tolerated;
- 4.2 co-operate and communicate with all substantially interested States, other shipowners, as appropriate, and seafarers, and take steps to provide seafarers' representative organizations with access to seafarers;
- 4.3 take action to expedite the efforts of a port, coastal, or flag State investigation;
- 4.4 take steps to encourage seafarers and others under their employment, with due regard to any applicable rights, to co-operate with any investigation;
- 4.5 use all reasonable means to preserve evidence to minimize the continuing need for the physical presence of any seafarer
- 4.6 fulfill their obligation in relation to the repatriation of, or take steps to re-embark, the

seafarers; and

- 4.7 ensure/verify that adequate provisions are in place to provide for the subsistence of each seafarer, including, as appropriate, wages, suitable accommodation, food and medical care

## **5 Guidelines for seafarers**

Seafarers should:

- 5.1 take steps to ensure, if necessary, that they have appropriate interpretation services;
- 5.2 take steps to ensure that they fully understand their right not to self-incriminate, and that they fully understand that when statements are made to port, coastal or flag State investigators, these may potentially be used in a future criminal prosecution;
- 5.3 take steps to ensure, if they consider it necessary, that they have arrangements for access to legal advice prior to deciding whether to give statements to port, coastal or flag State investigators; and
- 5.4 participate in an investigation, to the extent possible, having regard to their right not to self-incriminate, with port, coastal or flag State investigators, by providing truthful information to the best of their knowledge and belief.

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